

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

HARVARD REAL ESTATE-ALLSTON, INC.,	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 04-12249-DPW
	)	
KMART CORPORATION, KMART STORE 9424	)	
Defendant.	)	
	)	

**JOINT STATEMENT PURSUANT TO LOCAL RULE 16.1 (D)**

Pursuant to United States District Court for the District of Massachusetts Local Rule 16.1 (D) and the Notice of Scheduling Conference, the parties state that they have conferred and propose the following:

**I. PRE-TRIAL CONFERENCE AGENDA**

The parties agree that the Pre-Trial Conference agenda should follow that set forth in Local Rule 16.1 and 16.3 and should include the following:

1. Establishment of a Pre-Trial Schedule;
2. Consideration of settlement issues, including Alternative Dispute Resolution;
3. Consideration of consent to Trial by Magistrate Judge;
4. Plaintiff's Motion to Remand;
5. Plaintiff's Motion to Dismiss Counterclaims.

**II. PROPOSED DISCOVERY & MOTION SCHEDULE**

Deadline for Required Initial Disclosures:	Completed by Plaintiff
	January 25, 2005 for Defendant

Deadline for serving discovery requests, Interrogatories, Requests For Admissions, and Requests For Production of Documents:

March 15, 2005

Responses are due within 30 days of requests, unless extended by Stipulation between the parties, but in no case later than:

May 1, 2005

Deadline for serving Notices of Taking Deposition or deposition subpoenas, excluding Depositions of Expert Witnesses:

May 30, 2005

Deadline for completing Non-Expert Depositions:

June 30, 2005

Defendant Identification of Trial Experts, if any, pursuant to Fed. R. Civ. P. 26(a)(2) and Sequence of disclosure of Expert information:

July 15, 2005

Plaintiff Identification of Trial Experts, if any, which experts shall be limited to the same topics as Defendant's Trial Experts, pursuant to Fed. R. Civ. P. 26(a)(2) and Sequence of disclosure of Expert information:

August 15, 2005

Completion of Expert Depositions:

September 15, 2005

Deadline for Filing Motions for Summary Judgment:

October 15, 2005

Deadline for Opposing Motions for Summary Judgment:

45 days after service of Motion for Summary Judgment

Settlement Conference:

December 15, 2005

Final Pre-Trial Conference:

January 15, 2006.

Phased discovery is unnecessary in this case.

### **III. PROPOSED SCOPE OF DISCOVERY**

Local Rule 26.1 (C) shall apply except that the parties may propound 30 Interrogatories and 30 Requests For Admissions. The parties propose that the Court relax the limitations of Local Rule 26.1 C accordingly.. The parties shall be limited to taking 5 depositions each.

### **IV. DISCOVERY CERTIFICATIONS**

The parties will separately file their Local Rule 16.1(D)(3) certifications at the time of the Rule 16 Scheduling Conference.

### **V. TRIAL BY MAGISTRATE JUDGE**

The parties do not presently consent to trial by Magistrate Judge.

### **VI. ALTERNATIVE DISPUTE RESOLUTION**

The parties have consulted about the possibility of Alternative Dispute Resolution. The parties are agreeable to mediation at an appropriate time.

### **VII. SETTLEMENT PROPOSALS**

The Plaintiff has made a written settlement offer to the Defendant.

### **VIII. CERTIFICATION**

The parties hereby certify through counsel that they have consulted regarding the establishment of litigation budgets and proposals to resolve the matter through Alternative Dispute Resolution. The parties further certify that they have discussed the proposed pre-trial schedule and agenda and have agreed to the schedule set forth above, except where indicated otherwise.

**IX. PENDING MOTIONS**

- 1) Plaintiff's Motion to Remand
- 2) Plaintiff's Motion to Dismiss Counterclaims

Respectfully submitted,  
Plaintiff,  
Harvard Real Estate-Allston, Inc.  
By its attorneys,

/s/ Frank A. Flynn  
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Respectfully submitted,  
Defendant,  
Kmart Corporation  
By its attorneys,

/s/ William R. Moorman, Jr.  
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DATED: January 6, 2005